

U.S. OFFICE OF PERSONNEL MANAGEMENT

WORK-LIFE REFERENCE MATERIALS

CHAPTER 2: PROVIDING PHYSICAL FITNESS PROGRAMS

• What is a Physical Fitness Program?

Under 5 U.S.C. §7901, agencies may establish and operate physical fitness programs and facilities designed to promote and maintain employee health. Fitness programs should be designed to improve or maintain an employee's cardiovascular endurance, muscular strength and endurance, flexibility, and body composition.

Fitness programs may include:

- Walking clubs/events
- Aerobic exercise classes
- Weight lifting instruction
- Stretching classes
- Fun runs
- Lectures on safe participation
- Health education on physical exercise
- Fitness assessments.

Establish and administer physical fitness programs as an integral part of your agency's employee health services program. Your agency may operate on-site fitness facilities or use the services of a private facility. It is possible to offer fitness activities without special facilities.

In addition to providing programs and facilities, your agency may encourage an active lifestyle by issuing policies supporting flexible work schedules and creating environments that encourage active and healthy lifestyles (e.g., providing showers and locker rooms, bike racks, running maps, and healthy vending machine choices).

For Further Reading

In 2002, The Surgeon General's Call to Action to Prevent and Decrease Overweight and Obesity called on all sectors of society, including worksites, to take part in the call to action. The Surgeon General's Report on Physical Activity and Health, July 1996, states that a moderate amount of physical activity on a regular basis can improve health, and asks employers to provide supportive workplace environments and policies that help employees

become more physically active. Visit the website containing a compilation of the [Surgeon General's reports](#) or call 888-231-6405.

Checklist for Establishing Physical Fitness Programs

- Determine the need for and extent of the programs and facilities
- Identify available resources
- Establish a statement of goals and objectives
- Provide management support
- Determine the extent of programs and facilities and the method(s) for providing them
- Assure that programs are safe, appropriate, and meet legal and ethical requirements
- Select qualified personnel
- Publicize the availability of programs
- Plan for and coordinate the design of new health/fitness facilities in Government owned and leased space with appropriate GSA regional offices
- Make programs convenient and available to all employees
- Develop an ongoing evaluation process
- Negotiate or consult with unions, as appropriate
- Understand and reduce the risk of liability associated with physical fitness programs
- Consider the Federal tax rules governing providing fitness programs and facilities

• Who Pays for Physical Fitness Programs?

Physical fitness programs may be:

- Fully funded by your agency
- Funded by a combination of employees' fees and agency funding
- Fully funded by employee contributions or fees.

The extent to which your agency pays for fitness programs depends on budget, employee needs, and agency mission. Many agencies are exploring ways to share the cost with the employee. For example, many Federal fitness facilities are employee-funded, but agencies typically pay for the rent of space and start-up costs.

• **How May We Collect Fees from Employees?**

Employee contributions may be a significant funding source.

- They justify the initial establishment of new programs and facilities.
- They maintain existing programs and facilities.
- They ensure employees' commitment to regular participation.
- They increase the likelihood of public support for such programs.

Agencies may collect fees directly from employees under specified conditions, or arrange for fee collection by third parties, such as employee organizations or contractors.

Generally, any fees collected by a Federal agency from its employees must be deposited into miscellaneous receipts of the U.S. Treasury, unless you have statutory authority to do otherwise (31 U.S.C. §3302). Such fees, may not ordinarily be used to directly reimburse the costs of health facilities or programs.

Employee Fees Can Support Program Costs When Collected By a Contractor

Your agency may use the fees collected from employees to directly support program costs in the following situations:

Contractors who provide physical fitness programs may collect employee fees directly or make arrangements with an employee organization to collect fees from employees. Sometimes contractors are willing to split costs between the agency and participating employees. Through the contracting process, the agency and contractor determine the total cost. The agency then pays a predetermined portion. The contractor is responsible for collecting fees from the employees to cover the remaining cost.

When Collected By an Employee Organization

Many Federal fitness facilities are managed by employee organizations (such as a non-profit employee board or a recreation association). The employee organization manages the fitness facility via a contractor or its own staff. The organization charges the employee a membership fee to cover operating costs. Under this arrangement, the agency may collect employee fees through payroll deduction on behalf of the employee organization (5 U.S.C. §5525, Allotment and Assignment of Pay).

When Authorized by Congress

Some agencies, through the appropriations process, request special authority to collect fees directly from employees to cover the costs of their fitness centers.

When Using GSA Space and Services

If your fitness facility is located in GSA space, your agency pays for the use of the space and services such as electricity. Your agency may collect fees directly from employees to reimburse your agency's appropriated fund established for the cost of space and services (40 U.S.C. §490 (k)). Other costs typically associated with physical fitness facilities, such as staff and equipment, are not directly reimbursable under this authority.

The Administrator of the General Services Administration and the Director of the Office of Management and Budget must approve the rates an agency charges its employees. Any fees collected in excess of the actual cost for the space and services must be deposited into miscellaneous receipts of the U.S. Treasury.

Determining Employee Contributions

When determining costs to employees, consider:

- The total cost of implementing, administering, and maintaining facilities and programs.
- The agency mission and employee duties. For example, your agency may choose not to collect employee contributions from employees whose positions require them to meet job-related medical standards or physical requirements.
- Financial limitations of employees at lower income levels. The size of the employee contribution should not limit or prohibit participation of employees at lower income levels. Your agency could finance the cost of the services to the point where the contribution is reasonable for all employees.

• May We Grant Excused Absence for Participation in Physical Fitness Activities?

Each department or agency has discretion to excuse employees from their duties without loss of pay or charge to leave. Excused absence should be limited to those situations in which the employee's absence, in the department's or agency's determination, is not specifically prohibited by law and satisfies one or more of the following criteria:

- The absence is directly related to the department or agency's mission.
- The absence is officially sponsored or sanctioned by the head of the department or agency.
- The absence will clearly enhance the professional development or skills of the employee in his or her current position.
- The absence is brief and is determined to be in the interest of the agency.

Ultimately, it is the responsibility of each department or agency head to balance support for employees' participation in physical fitness activities with employees' work requirements and efficient and effective agency operations. Your agency should review its internal guidance on excused absence and applicable collective bargaining agreements.

Examples of situations that may warrant short periods of excused absence include participation in officially sponsored and administered physical fitness programs, health education classes, medical screenings, or health fairs.

Consider the following recommendations for establishing employee participation policies:

Encourage Fitness

- Publish policies that encourage management to support flexible work schedules to help employees find time to exercise.
- Visibly support fitness by authorizing time off for special agency-sponsored physical activity events such as a fitness facility orientation, an agency fun-run, or fitness month activities.
- Schedule health and fitness activities to the extent possible immediately before and after working hours and during the lunch period. Lunch breaks may be made longer for employees on flexible work schedules.
- Make showers and locker rooms available at the worksite, as well as bike racks and physical activity educational materials.
- Issue a health and fitness newsletter for employees.
- Sponsor fitness challenges, incentives, and competitions.
- Form an employee health committee and/or work with the union to identify employee health needs and interests.

Make Employees Responsible

The employee may use non-duty time, including lunch periods, when participating in health and fitness activities of long-term duration or that have an indefinite ending date, such as a regular exercise program.

Encourage Supervisors

Your agency should encourage supervisors to accommodate, when possible, employee requests for flexible work schedules and annual leave in order to participate in health and fitness activities. Often employees may use the flexibilities of an agency's alternative work schedule program to find convenient non-duty time for this purpose.

• May We Provide an On-site Federal Fitness Facility?

Your agency may provide an on-site fitness facility for its employees. The agency fitness facility might offer a variety of services:

- Exercise equipment

- Fitness activities
- Health screenings
- Health education
- Intervention programs.

There are a variety of options for administering the facility. Your facility may be:

- Agency operated
- Provided by an employee organization
- Provided through a consortia or interagency agreement.

When developing plans for your fitness facility, carefully consider health industry recommendations on staffing, facility design, equipment selection and maintenance, and safety. The American College for Sports Medicine is a good source for written standards and guidelines and several of their resources are referenced in this handbook.

• **How Do We Staff an On-site Federal Fitness Facility?**

The success or failure of a health and fitness program may hinge upon the competence and friendliness of the staff, including having an adequate number of trained staff. Surveys indicate that quality leadership, coupled with a staff that stays current through ongoing training, rank high in terms of continued participation.

Fitness facility staff might include:

- A Fitness Director or Program Manager
- A Health Fitness Specialist or Assistant Manager
- Group Exercise Class Leaders
- Additional staff to provide special services such as health education classes.

Fitness Director/Program Manager

Sample duties of the staff might include the following:

- Manage day-to-day operations
- Develop, plan, and implement health/fitness programs
- Train, supervise, and schedule staff

- Interact with contract liaison or board of directors
- Account for membership fee collection, billing, payroll deduction tracking, and record keeping and collection
- Supervise facility and equipment maintenance
- Recruit and retain members
- Conduct fitness assessments, individual programs, and behavioral counseling

Health Fitness Specialist/Assistant Manager

- Help promote and administer all intervention programs and health education classes
- Assist in overall administration of the program
- Lead a variety of fitness classes
- Conduct fitness testing, individual programs, and behavioral counseling
- Market and promote the program through newsletters, calendars, special events, etc.

• How Do We Design an On-site Federal Fitness Facility?

Planning a fitness facility requires time, research, and careful attention to detail. Consult Federal, State, or local regulations. Compare your facility design and planned services to the standards outlined in the American College of Sports Medicine's Health/Fitness Facility Standards and Guidelines, Second Edition. Visit other facilities to talk with the staff and members. Your agency might use a fitness facility management company to design the facility or to get expert advice.

The General Services Administration provides or arranges for adequate space and equipment for EAPs, health units, and fitness facilities in Federally owned and leased buildings. Work with appropriate GSA regional offices to conduct employee surveys and to design and build programs and facilities. Your agency is responsible for purchasing the exercise equipment, lockers, and nonstandard interior finishes. Also consult GSA's Customer Guide to Real Property, a product of the Public Buildings Service. Search the GSA website at www.gsa.gov or call 202-501-1100.

A comprehensive facility will include:

- Sign-in/Control Desk
- Office/Testing Area/Storage
- Cardiovascular Equipment Area
- Strength Training Area

- Group Exercise Class Area
- Locker Rooms
- **How Might An Agency Purchase Equipment for an On-site Federal Fitness Facility?**

Your agency may purchase equipment for your fitness facility. Survey employees to determine preferences.

Equipment Quality

Purchase equipment designed for "club use." The equipment must stand up well to wear and tear and heavy use. There are many well-recognized equipment manufacturers. The exercise equipment industry is rapidly growing, so the "top of the line" equipment may change from year to year. Consult with other Federal facilities or a fitness management company to narrow your choices.

Equipment Cost

Consider equipment cost. Specifically, request GSA pricing when comparison-shopping. There are other options to paying in full, such as leasing equipment or purchasing used equipment from other facilities listed on Government surplus lists.

Equipment Maintenance

Equipment that looks new and functions properly holds its value and is a major factor in keeping members.

Even well built equipment requires attention on a regular basis. Clean and maintain the equipment routinely to reduce the number of repairs and extend the life of the machinery.

Consider using the services of an equipment maintenance company. This is especially convenient for cardiovascular equipment that requires frequent replacements of parts.

Equipment Wish List Cardiovascular Equipment

- Treadmills
- Stair Climbers
- Stationary Cycles
- Upper Body Ergometers
- Cross Country Ski Machines
- Rowers

Strength Training Equipment for Lower Body Muscles

- Quadriceps
- Hamstrings
- Calves
- Upper Back
- Lower Back
- Chest
- Shoulders
- Biceps/Triceps
- Abdominals

Free Weight Equipment

- Upright Bench
- Flat and Incline Benches with Bars and Plates
- Dumbbells Ranging from 3-80 Pounds
- One Small, Medium and Large Lifting Belt
- Smith Machine (Alternative to a Squat Rack)
- Dip/Pull-Up Station (Or Assisted Dip/Pull-Up Station)

Exercise Class Equipment

- Individual Mats for Stretching and Toning Exercises
- Dumbbells Ranging from 3-20 Pounds
- Elastic Bands or Surgical Tubing For Strength Exercises
- Benches or Steps

• How Do We Reduce the Chances of Injury at Our On-site Federal Fitness Facility?

Despite precautions, accidents can occur. The majority of accidents can be prevented through adequate supervision, staff training, appropriate screening procedures, and proper facility and equipment upkeep.

Your agency must be prepared to respond in a responsible and timely manner. Develop safety policies and a comprehensive emergency plan. Document, post, and practice emergency response procedures.

Use the following important health industry strategies for safe fitness facility operation:

- Provide adequate supervision at all times using competent and professionally trained and certified staff with current CPR certification. Have staff inspect locker rooms on a regular basis throughout hours of operation.
- Require pre-activity screening (e.g., a Physical Activity Readiness Questionnaire (PAR-Q), or health history/medical questionnaire) to identify individuals who need medical clearance to participate in fitness activities and to identify risks for certain activities.
- Provide a telephone or another emergency calling system adjacent to physical activity areas. Having a cordless phone at the facility is particularly important for on-site injuries or medical incidents that require phone consultation with emergency medical response personnel. A cordless phone allows the on-site responder to stay with the victim while getting phone assistance.
- Develop a comprehensive emergency plan. Post emergency procedures with emergency contact numbers. Develop the plan in conjunction with building security and the health unit.
- Conduct emergency practice drills with staff at least twice a year. Do all that is necessary to ensure that staff knows the emergency procedures.
- Use nationally recognized tests and procedures when providing screenings, evaluations, and fitness testing. Professionally trained or certified staff should administer fitness tests before prescribing exercise activities.
- Use informed consent statements to advise participants of the benefits and risks of participation, testing, and physical activity.
- Distribute fitness facility rules and regulations to participants.
- Provide a fitness facility orientation and give detailed instructions on how to safely use the facility and equipment.
- Sign in participants at each visit and check for expired clearances or lapses in attendance.
- Post manufacturer's instructions for all equipment.
- Post warning signs that identify dangerous physical symptoms to watch for during exercise (nausea, dizziness, and pain in chest, for example) and for relevant risks associated with use of specific equipment.
- Provide clocks and target heart rates or perceived exertion charts so that participants can monitor their exercise levels.
- Provide appropriate and safe equipment and facility layout.

- Post warnings for any unsafe conditions (e.g., wet floor, high heat index).
- Conduct classes at appropriate levels for participants. Instructors should be CPR certified.
- Make available basic first aid supplies.
- Report accidents.
- Ensure and document ongoing inspection, maintenance, and repair of the fitness facility and equipment. Remove any broken or unsafe equipment.
- Incorporate a cleaning and maintenance system that ensures a sanitary and safe environment.

• **How May We Use Off-Site Fitness Facilities?**

Providing health and fitness activities via a private facility may be part of an agency's bona fide preventive program authorized under 5 U.S.C. §7901.

Agencies, in exercising this authority to purchase access to private health and fitness facilities, should use the following criteria in making the determination:

- Providing access to a private fitness facility meets agency health services program objectives and can be carefully monitored as part of a bona fide preventive health program.
- Providing access to private facilities is more cost effective than providing an on-site fitness facility.
- Coordinating with other Federal agencies in the area to provide a multi-agency operated fitness facility is not possible.
- Other possible resources (such as other Federal fitness facilities) or typically lower cost facilities (such as community centers or universities) were identified, considered, and determined to be unavailable or inappropriate.

Facility Criteria

Consider the following criteria when selecting a particular private health and fitness facility.

- The private fitness facility is the most appropriate, convenient, and cost effective private fitness facility available in the geographical area.
- The facility provides bona fide preventive health program services and activities, such as:
 - Screening for health risks
 - Cardiovascular endurance equipment and activities

- Muscular strength and endurance equipment and activities
 - Flexibility equipment and activities
 - Equipment orientations
 - Fitness evaluations
 - Exercise plans.
- The facility takes appropriate precautions for reducing the risk of injury.

Purchasing Criteria

Consider the following recommendations for purchasing memberships.

- Purchase the memberships in the name of the agency, not in the name of the individual employee.
- Follow Government procurement guidelines when contracting with private fitness facilities to provide access for employees.
- Choose basic membership packages (if there are such options) and avoid deluxe package options (e.g., spa privileges or activities that are purely recreational and do not contribute to a bona fide preventive health program).
- Monitor the facility and the employees' use of memberships.
- Be aware that health club memberships provided to employees might be considered a taxable fringe benefit.
- Become informed about the liability issues reviewed in this chapter.

Related Guidance

1. The Comptroller General's Decision, B-240371, January 18, 1991, indicates that 5 U.S.C. §7901 and its implementing regulations authorize the use of appropriated funds to provide employees access to a private fitness center's exercise facilities. The prohibition in 5 U.S.C. §5946 against the use of appropriated funds to pay membership dues of Federal employees does not prohibit a Federal agency from using appropriated funds to purchase access for its employees to a private fitness center's exercise facilities.
2. Health club memberships for employees may be considered a taxable fringe benefit. For further clarification, check with your Office of General Counsel or with the Internal Revenue Service, Office of the Chief Counsel, Tax Exempt and Government Entities Employment Tax Branch 2 at 202-622-6040.

• What Are the Liability Risks Associated with Physical Fitness Programs?

While the benefits of providing health and fitness activities outweigh the risks, your agency should be aware of liability issues. Persons sustaining personal injury may bring claims against the U.S. Government under two Federal Statutes: the Federal Employees' Compensation Act (FECA) and the Federal Tort Claims Act.

The Federal Employees' Compensation Act (FECA)

FECA, as amended, 5 U.S.C. §8101 et seq., provides for the payment of workers' compensation benefits to Federal employees sustaining injuries while in the performance of their duties. The Department of Labor has established guidelines defining the scope of FECA's coverage for employees injured while engaging in physical fitness activities.

1. An employee injured while engaging in physical fitness activities has the right to file a claim for benefits under FECA.
2. An employee who is injured while engaging in an activity that is specifically identified in that employee's Physical Fitness Program (PFP) is covered for all FECA benefits. A PFP is an agency initiated and structured program that allows employees to participate in specified physical exercise activities and includes medical screening. Fitness coordinators oversee exercise activities and review exercise logs.
3. For an employee who is injured while engaging in a physical fitness activity or recreational activity that is not part of a PFP, coverage is considered on a case-by-case basis, using claims information to determine if one of the following three criteria has been met:
 - The activity occurs on the agency's premises during the employee's normal working hours, unless specifically barred by the agency.
 - The employing agency explicitly or implicitly requires the employee to participate, or makes the activity within the employee's scope of employment. For example, if an agency required that an employee participate in a mandatory fitness evaluation, that employee, if injured during the evaluation, would be covered.
 - The employing agency derives substantial direct benefit from the employee's participation in the activity, above and beyond the benefits of morale and good health. An example of a case covered is a Federal employee who is injured playing a softball game with an outside organization that worked on some cooperative projects with the employing agency. The employee's injury is covered because of a combination of factors, one of which was that the employee's participation in the activity established a closer professional relationship with the outside organization and substantially benefited the agency.

FECA provides the exclusive remedy against the U.S. Government for Federal employees injured in the course of their employment. If an employee receives payment under FECA,

he/she cannot bring suit against the U.S. Government under the Federal Tort Claims Act for death or disability arising out of Federal employment.

Federal Tort Claims Act as amended by the Federal Employees Liability Reform and Tort Compensation Act of 1988

This Act provides individuals with an appropriate remedy against the U.S. Government for personal injury caused by the negligent or wrongful acts of Federal employees.

Under this Act a Federal employee can no longer be sued personally for negligent or wrongful acts resulting in personal injury, provided that the employee was acting within the scope of his/her office or employment. Instead, the U.S. Government will represent the employee and serve as the defendant.

However, the Act does not protect the Federal employee if his/her conduct is illegal, in violation of the Constitution, or outside the scope of his/her employment. For these reasons, employees responsible for administering physical fitness programs may want to consider professional liability insurance as a precaution.

Injured parties not covered under the Federal Employees' Compensation Act, who are injured by such conduct of Federal employees, may bring suit against the U.S. Government under this Act.

In some cases, injuries will result in suits by the injured party against non-Federal groups (e.g., contractors, employee organizations that are responsible for providing physical fitness programs, fitness equipment vendors, and private health clubs). When contracting with vendors, agencies should require that the vendor carry general liability insurance.

The Use of Waivers

Use waivers and informed consent forms for participation in agency sponsored fitness facilities or events. The general thought on the use of waivers is that they do not absolve an agency from liability for its negligence, but rather they:

- Outline the terms of the event
- Inform the participant of the risks
- Limit liability exposure.

Check with your General Counsel to determine the need for a waiver or other screening forms and to ensure that it conforms to the appropriate State and local laws governing such forms.